IN THE SUPREME COURT OF FLORIDA

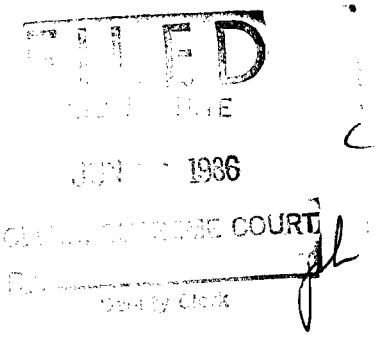
SAM FALZONE,

Petitioner,

v. CASE NO. 68,178

STATE OF FLORIDA,

Respondent.



RESPONDENT'S BRIEF ON THE MERITS

JIM SMITH
ATTORNEY GENERAL

WILLIAM E. TAYLOR
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

OF COUNSEL FOR APPELLEE

/tms

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED

PRELIMINARY STATEMENT

SAM FALZONE will be referred to as the "petitioner" in this brief. The STATE OF FLORIDA will be referred to as the "respondent". The record on appeal will be referred to by the letter "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as set forth by the petitioner.

SUMMARY OF THE ARGUMENT

Regarding Issue I - The respondent notes that this issue covers two different questions. One is the question of overbreadth and the other is the question of vagueness. The respondent will deal with the question of overbreadth under this issue, but will deal with the question of vagueness under Issue II herein, since that deals with what the statute says or does not say.

As to overbreadth, the respondent will argue that while statutes infringing on one's constitutional rights must be closely scrutinized, there is adequate case law to show that the election campaign laws have been found to be a necessary intrusion into one's constitutional rights and the respondent will also cite cases that have implicitly approved of the reporting and registering regulations of Florida Statute 106.

As to Issue II - The respondent herein will argue that the Florida Second District Court of Appeal did no more than what it was required to do. That is, it applied the presumptions supporting the validity of the statute as it is required to. The petitioner's argument that a statute must be construed strictly in favor of the defendant is correct, yet this does not mean that the other presumptions do not apply, since the question resolved itself to the sequence of application. One must first apply the presumptions concerning the validity of the statute, vagueness, etc., and if the statute survives, doubts in its application must be resolved in favor of the defendant. When this is done sub judice, no problem exists.

Further, the respondent will argue that the scenarios presented by the petitioner in his attempt to show that the statute is unworkable, do not apply to him and are no more than speculation and conjecture. There is case law to show that a statute is not vague or indefinite simply because one can create hypothetical situations that are perplexing.

ARGUMENT

ISSUE I

THE TRIAL COURT DID NOT ERR IN FINDING THAT §106.03 IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD AND FAILS TO PLACE ORDINARY CITIZENS ON NOTICE AS TO WHAT CONDUCT IS PROSCRIBED AND WHEN COMPLIANCE IS REQUIRED.

This issue presented by the petitioner constitutes two separate questions. The respondent will deal first with the question of whether or not Florida Statute 106.03 is overbroad.

Overbreadth

The petitioner states at page five of his brief that this statute imfringes on one's freedom of expression and freedom of association. He goes on to state that the courts must scrutinize this type of statute very closely for this reason. Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976). The respondent herein agrees with this doctrine, but would ask the court to note that the petitioner then goes on in his brief to argue concerning the definiteness of the language used in the statute. This argument, however, more appropriately falls under the question of vagueness and not whether the statute is over broad.

At page six of his brief, the petitioner cites State v. Dinsmore, 308 So.2d 32 (Fla. 1975), for the proposition that a court may have sympathy for legislation, but sympathy cannot be allowed to impair the court's judgement. Again, the respondent herein has no disagreement with that case or with that concept, but nowhere in the state's brief to the Florida Second District

Court of Appeal and nowhere in that court's opinion did the question of the court's sympathy arise. Before the Florida Second District Court of Appeal, the state dealt with the valid presumptions that must be applied in determining whether a statute is constitutional. The argument concerning that, however, will be discussed in the appropriate portion of this brief when the respondent addresses the question of vagueness.

The petitioner at page six of his brief states that the Second District Court of Appeal ignored the fact that Florida law is well settled that statutes penal in nature must be strictly construed according to the letter thereof. Ex parte Bailey, 23 So. 552 (Fla. 1897) and Reynolds v. Cochran, 138 So.2d 500 (Fla. 1962). The petitioner goes on to state that penal statutes are to be strictly construed in favor of the person against whom the penalty is sought to be imposed. Allure Shoe Corporation v. Lymberis, 173 So.2d 702 (Fla. 1965). Again, the respondent herein has no disagreement with those cases or with that concept. The respondent will answer this charge by the petitioner in the later portion of this brief dealing with vagueness, since it is not appropriately applied to the question of overbredth. Suffice it to say at this point in the brief that the Florida Second District Court of Appeal did not ignore that concept and it was addressed in the state's brief below. What one encounters is a situation where there are two presumptions, one of which says that a statue must have presumptions resolved in its favor concerning its validity and another which

states that a statute must be strictly construed in favor of the person who is the defendant. Both of these presumptions can be harmonized and, in fact, if one puts them in their proper sequence, there is no problem. In order to strictly construe a criminal statute in favor of an appellant, one must first apply the presumptions to determine if the statute will continue to exist. After those presumptions have been applied, if the court still determines that the statute is constitutional, then the statute is applied in favor of the defendant. Just as when one does an algebraic problem, one is confronted with the significance of sequence of operation, one is also presented with the same importance when one is dealing with presumptions.

When one sorts out the arguments in the petitioner's brief concerning the two separate question (overbreadth and vagueness) the overbreadth question presented by the petitioner is totally without basis. In the case of Trushin v. State, 384 So.2d 668 (Fla. 3 DCA 1980), the court at page 674 states:

> [3-5] In approaching this issue, we are aware both that any legitimate doubts as to the proper construction of §104.06(2) are to be resolved so as to preserve its constitutionality, **White v. State**, 330 So.2d 3 (Fla. 1976); and that since as "mere speach", its alleged overbreadth "must not only be real, but substantial as well judged in relation to the statute's plainly legitimate sweep." **Broadrick v.** Oklahoma, 413 U.S. 601, 615, 93 S.Ct. 2908, 2918, 37 L.Ed.2d 830 (1973); **State v.** Elder, supra.

The courts have uniformly approved of the idea that regulation of political campaigns including required reports is permissible and is not over broad as an intrusion on an individual's constitutional rights under the First Amendment. See Smith v. Tynes, 412 So.2d 925 (Fla. 1 DCA 1982); Florida Police Benevolent Association-Political Action Committee v. Florida Elections Commission, 430 So.2d 483 (Fla. App. 1 Dist. 1983); Winn Dixie Stores, Inc. v. State, 408 So.2d 211 (FSC 1981), reh. den. Feb. 8, 1982; Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980); and Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976)

The respondent herein cannot argue strongly enough that there is no disagreement between the petitioner and the respondent concerning the fact that a statute that infringes on one's constitutional rights must be closely scrutinized. The respondent would respectfully suggest also, that if one examines the complained of opinion on the Florida Second District Court of Appeal in this case, it is clear that they recognize that close scrutinity is necessary. In spite of this, however, an examination of the cases cited above, one finds that the concept of registering political committees and requiring reporting as to monies collected, etc., has consistly been found to be within the bounds of an appropriate government function even if it does infringe upon one's constitutional rights under the First Amendment.

In the case of Let's Help Florida v. McCrae, supra the

court found that Florida Statute 106 did improperly infringe on significant First Amendment rights concerning the amounts that could be contributed by a single political committee. However, that very case, in order to arrive at the decision it did, implicitly approved of the portion of the Florida Statute that is now under attack by the petitioner. The court in Let's Help Florida, supra at page 200 stated:

> [10] Florida can and does effectively promote the disclosure of large contributors through measures that are less harmful to First Amendment rights. For example, §§106.03 and 106.07 of the Florida Election Code require political committees to register with the state and to file information about each contribution and contributor throughout the campaign. This information is available to the public and may be published through newspapers and other media. Section 106.143 requires disclosure of the source of payment for all political advertisements and campaign literature. Measures such as these provide adequate disclosure without directly restricting contributions or other important First Amendment rights. See C & C Plywood, 583 F.2d at 425 (rejecting argument that sate interest in promoting disclosure justifies prohibition of corporate contributions in a referendum election).

See also Winn Dixie, supra at page 213, where this Honorable Court adopts the reasoning from Let's Help Florida, supra, and quotes the portion of the opinion dealing with Florida Statute 106.03.

The United States Fifth Circuit Court of Appeals, in reaching the above conclusion, clearly did not find Florida Statute 106.03 over broad, for if it had, it could not have relied on that portion of the statute to make Florida Statute 106.08(1)(d)

inoperative (under some circumstances).

The government of this state has legitimate interest in seeing that elections are free of corruption and that the democratic process is not subverted by money. The requirements of Florida Statute 106.03 are not especially onerous and one would be hard pressed to tell this court how a statute could be rewritten to interfere less with one's First Amendment rights when one considers the counterbalancing need for a regulated electoral system. There must be a reasonable relationship between the purpose of the legislation and the legislation that is finally enacted. See Bell v. State, 369 So.2d 932 (Fla. 1979) and Finley v. State, 56 L.Ed. 75 (1911). Sub judice, there clearly is a reasonable relationship, and the degree of intrusion into a constitutionally protected area is minimal.

Florida Statute 106 makes three simple requirements: that groups that are campaigning for a specific candidate, register so that their existence is known; that the groups keep track of the funds that are received and expended; and that the group keep the government advised as to any changes in the group as to responsibility for the actions of the group. None of these requirements, singly or in the aggregate, are overbroad and the cases cited previously in this brief would indicate that the courts examining campaign laws have seen the necessity for their existence.

The question of vagueness will be included under Issue II of this brief, since it is part and parcel of how one interprets

the petitioner's contention under his Issue II that Florida Statute 106.19 does not include 106.03 violations within its provisions.

ISSUE II

THE TRIAL COURT DID NOT ERR WHEN IT DISMISSED THIS CAUSE BECAUSE §106.19, FLORIDA STATUTES DOES NOT INCLUDE §106.03, FLORIDA STATUTES "VIOLATIONS" WITHIN ITS PROVISIONS.

In interpreting a statute and determining whether or not it is constitutionally vague, there are certain presumptions that must be applied whether one is dealing with a civil case or a criminal case. The respondent will set out those cases and the doctrines they support in order that during the subsequent argument portion of this brief, the petitioner need refer only to the doctrines that apply.

In deciding whether a statute is valid, every presumption must be indulged in favor of the validity of the statute. State v. Cormier, 375 So.d 852 (Fla. 1979) and Griffin v. State, 396 So.2d 152 (Fla. 1981). Because of this, the party attacking a statute bears the burden of demonstrating clearly that such statute is invalid. The Village of North Palm Beach v. Masson, 167 So.2d 721 (Fla. 1964).

The validity of a statute should be resolved in favor of its constitutionality. McKibben v. Mallory, 293 So.2d 48 (FSC 1974).

It is presumed that the legislature intended an inactment to comport with fundamental law. Seaboard Air Line Railway Company v. Watson, 137 So. 719 (FSC 1931).

The cardinal rule in all cases of statutory construction is to follow the legislative intent. Chiapetta v. Jordan, 16 So.2d 641 (FSC 1943), reh. den. 1944.

A statute must be construed in such a way as to effectuate legislative intent and all doubts as to the validity of the statute should be resolved in favor of the statute. McKibben v. Mallory, supra.

All parts of an act must be considered and harmonized so that the whole scheme may be made effectual. Chiappetta v. Jordan, supra.

A complex and multifacited regulatory statute must be read as a whole before determination of its constitutionality can be wisely made. State v. Bales, 343 So.2d 9 (FSC 1977), reh. den., March 31, 1977.

Courts disregard verbal inaccuracies and resolve reasonable doubts in favor of its constitutionality. Wright v. Board of Public Instruction of Sumter County, 48 So.2d 912 (FSC 1950), reh. den. December 19, 1950. In construing a constitution or a statute, primary importance will be paid to the policy which the statute or section is attempting to implement. State v. ex rel. Moodie et al. v. Bryan et al., 39 S.Rptr. 929 (FSC Dec. 19, 1905).

In construing a statute or constitutional provision they should be interpreted to accomplish and not to defeat their purposes. Neisel v. Moran, 85 So. 351 (FSC Aug. 21, 1919). Under our system of jurisprudence constitutional validity may be determined by practical operation and effect. State ex rel. Harper v. McDavid, 200 S.Rptr. 100 (FSC 1941), reh. den. 1941.

If there is any reasonable theory upon which the validity

of a statute may be upheld, it is the duty of the court to resolve that theory in favory of the validity. This is particularly true if confronted by two theories; interpretation of one which results in striking it down, while the other results in upholding it, it is the duty of the court to adopt the later interpretation. Ball v. Branch, 16 So.2d 524, 525 (Fla. 1944).

Finally, interpretation of a statue that would lead to an absurd result should be avoided. McKibben v. Mallory, supra.

The petitioner in his brief argues that these presumptions do not apply to criminal statutes, but to civil statutes. This is the same argument that he made before the Second District Court of Appeal and which argument was rejected. The merest perusal of the recorded cases that have been digested show that these presumptions have been applied in criminal and civil cases. The petitioner apparently believes that they do not apply since under his interpretation, there exists a conflict between the presumptions. That is to say, presumptions concerning the validity of a statute, legislative intent, etc., fail, since there also exists a rule that statutes will be construed strictly in favor of a defendant. The petitioner's argument fails, however, when one realizes that in order to interpret a statute strictly in favor of a defendant one must first decide whether the statute exists. In order to determine the existence of the statute in this case, one must resolve to constitutional questions as to vagueness of the statute itself. Therefore, one applies first the presumptions regarding the statute, and if the

statute passes muster, one must apply that statute strictly and in favor of the defendant. If this logical sequence was not followed, not only would the court constantly find presumptions in conflict, but the courts would find many statutes unconstitutional since the petitioner's argument would resolve presumptions concerning their very existence against them. Such an outcome is totally unworkable and would undermine our system of legislation and jurisprudence.

At page nine of his brief, the appellant states that there is a conflict within the statute concerning Florida Statute 106.011(1) since a committee may be a combination of two or more individuals, but the statute also states that a person other than an individual can constitute a political committee. The petitioner goes on to say that this is nonsensical since a person and an individual are the same thing. If one examines Black's Law Dictionary, revised fourth edition, West Publishing Company, 1968, one finds the following definition of "person":

> Term may include artificial being, as corporations (citations omitted).

If one examines Ballentine's Law Dictionary, Lawyers Cooperative Publishing Company, 1969, one finds the following definition of "person":

> An individual or an organization. An individual, man, woman or child or as a general rule, a corporation. Inclusive of bodies politic and corporate. (Citations omitted).

Clearly then, a person and an individual may be the same thing, but as a term of art in law, a person may also be something else. Viewed in this light, there is certainly no conflict in this portion of the statute, but only the legislature advising the reader that he may not circumvent the law by forming a committee composed of legal entities instead of flesh and blood individuals.

The petitioner goes on at page nine, et seq. of his brief to cite other instances that he claims are anomalies. The petitioner will first argue that any appellate review of the statute that disintigrates into hypothetical questions of "what if" has totally missed the point. The case of Pennsylvania v. Ashe, 302 U.S. 51 (1937) states that while marginal factual situations may arise under a statute, that does not of itself render the statute vague. Additionally, however, the respondent will argue that the petitioner at page nine of his brief has correctly interpreted the statute since it does not exclude a husband and wife from being a political committee. Every husband and wife who contribute to a political campaign would not be a committee, yet if they form with certain purposes as set out in the statute, they conceiveably could be a committee. The petitioner at page nine of his brief also finds fault since the legislature has dealt with "incidental" purposes of citizens. The respondent can only argue that, in order for the statute to be workable, it must be drafted in this manner, otherwise, any group could form a committee and claim that its prime purpose was,

bowling, skiing, literature reviews, and that the political activities were only incidental. This would clearly allow the purpose of the statute to be avoided.

The petitioner then goes on at page eleven of his brief to attack the statute because it deals with whether someone anticipates collecting or spending over $500 per year. The petitioner at page thirteen of his brief states:

> "It strikes petitioner as shocking and ludicrous to have a statute in this country create a potential criminal conduct based upon a citizen's 'anticipation' of events, particularly fund raising."

The respondent herein, will not string cite statutes, but will ask the court to observe that a modern society deals often with anticipation. One must go through certain formalities and obtain a driver's license prior to driving an automobile; he must do the same if he wishes to build a house, if he wishes to start a business, or if he plans to catch a fish. One doesn't obtain a fishing license after he catches a fish. It is issued in anticipation of catching a fish whether that occurs or not. By the same token, when a committee forms to support a candidate, they have a relatively clear idea of their object, and while they might not be exact in the amounts of collections, they know whether or not they plan to attempt collecting, and if there is a chance that they are going to collect over $500, they are warned by the statute to register. There is nothing improper with this and certainly nothing vague unless the petitioner wishes to create vagueness through obfuscation and pettifogging.

The appellant at page thirteen relies on the cases of Kelly v. State, Rosowsky, 55 So.2d 561 (Fla. 1951); Dinsmore v. State, surpa and State v. Llopis, 257 So.2d 17 (Fla. 1971), for the proposition that the legislature cannot predicate a crime on future acts or contingencies. The respondent herein has no disagreement with those cases, however, they do not apply factually to the matter sub judice, since a modern, regulated society does require registration, licensing, etc., in anticipation of what the future holds, and if one explains to a game warden that he is going to apply for a license as soon as he cleans his fish, the argument would fall on deaf ears.

The petitioner at page thirteen et seq. of his brief deals with what he considers a conflict between 106.011(1) and 106.03. The respondent herein will agree that reference to the opinion of the Second District Court of Appeal is necessary.

The petitioner tries to make much of a difference between the definition portion of the statute and the body of the statute; yet the Florida Second District Court of Appeal clearly and correctly noted that Florida Statute 106.011(1) specifically states:

> "Unless the context clearly indicated otherwise."

The petitioner at page fourteen of his brief quotes from the opinion of the Florida Second District Court of Appeal and the respondent herein will argue that that portion of the opinion does resolve the question since it attempts to harmonize the

statute which is the posture that is required of a court. While the petitioner herein may benefit from disharmony, it is the reviewing court's duty, and the presumptions require, that statutes should be harmonized.

The petitioner at page twenty, et seq. of his brief goes on to argue that Florida Statute 106.03 does not state any criminal penalties for failing to comply with the statute. He claims that Florida Statute 106.19, which deals with penalties, does not specifically mention Florida Statute 106.03, and therefore, the average citizen would believe that violation of Florida Statute 106.03 was without penalty. The respondent herein would respectfully disagree for several reasons. While it is true that a lawyer reading the entire statute may be able to contrive an argument to show that the penalty portion of the statute does not apply to Florida Statute 106.03, the average person reading the statute would clearly apply logic. This same logic underlines all of the presumptions raised in the previous portions of this brief which states that every presumption must be indulged in favor of the validity of the statute, the validity of the statute must be resolved in favor of its constitutionality, it is presumed that the legislature intended an enactment to comport with fundamental law, all cases of statutory construction are to follow the legislative intent, a statute must be construed in such a way as to effectuate legislative intent and all doubts as to the validity of the statute should be resolved in favor of the statute, all parts of an act

must be considered and harmonized so that the whole scheme may be made effectual, a complex and multifacited regulatory statute must be read as a whole before determination of its constitutionality can be wisely made, courts should disregard verbal inaccuracies and resolve reasonable doubts in favor of its constitutionality, in construing a constitution or a statute, primary importance will be paid to the policy which the statute or selection is intending to implement, in construing a statute or constitutional provision they should be interpreted to accomplish and not to defeat their purposes, under our system of jurisprudence, constitutionality may be determined by practice, operation and effect, if there is any reasonable theory upon which the validity of a statute may be upheld, it is the duty of the court to resolve that theory in favor of validity. (The cases supporting all of these many presumptions have been cited previously in this brief.)

Based on the above, can one really argue that a lay person would read this statute and determine that it need not be followed since there was no penalty attached to its abuse? Florida Statute 106, when read in its entirety and harmonized, has as a basis one purpose which is to avoid corruption in elections and to guarantee the democratic process by seeing that that process is not undermined. In order to do so, it has three requirements: (1) that groups that are campaigning for a political candidate register; (2) that these groups report contribution amounts, contributors and expenditures; (3) that the records of

this group be kept updated as to changes, etc. The legislative intent could not be clearer in the purpose of the three categories above, yet for the petitioner's argument to be valid, one would have to argue that there is a penalty attached to violations of requirements two and three, yet none is attached to violation of requirement one. This leads one to the inevitable, but unworkable conclusion that if a group registers, it must keep records, reports, etc., yet a group may totally avoid the law by not registering, since there is no penalty attached to violation of category one. This leads to an absurd result and the law is clear that interpretation of a statute that would lead to an absurd result should be avoided. McKibben v. Mallory, supra and if there is any reasonable theory upon which a statute may be upheld, it should be relied upon. Ball v. Branch, supra.

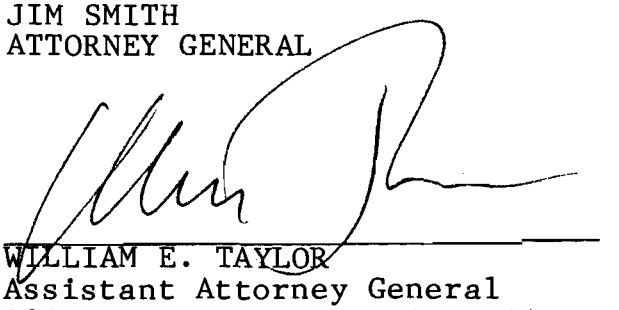
The petitioner states that since Florida Statute 106.19(c) uses the word "include", that it only makes a crime of failing to update information, and that originally failing to provide any information would not be a crime. While it might behoove the petitioner to make this argument, the respondent would respectfully suggest that this Honorable Court, relying on the presumptions listed previously in this brief, choose the preferred interpretation. The respondent will again stress at this point that presumptions regarding how a statute is to be applied are separate and distinct and the question need not even arise until other presumptions are applied to test whether the statute

is too vague as to even be charged under. If at that point the statute still stands, one can deal with the presumption of applying it strictly in favor of the petitioner, yet one would be forced to ask at this point, if the petitioner herein was part of a group of less than two people, or if he did not anticipate, but inadvertently collected funds, or if he is part of a husband and wife team that was inadvertently caught in the web of this statute. If the petitioner could answer "yes" to any of these, then perhaps, the appellate court could be sympathetic to his argument concerning application of the statute strictly in his favor. The respondent does not believe, however, that any of the scenarios that the petitioner presents to show the alleged shortcomings of the statute apply to him. The respondent herein will argue that if one attempts to harmonize a statute with the legislative intent of the statute as a whole, the word "include" should be interpreted as "provide".

If this Honorable Court were to determine that the Florida Second District Court of Appeal was incorrect and that there is no penalty for failing to register initially, then the remainder of the statute is without purpose. The respondent herein does not argue, and has never argued, that the statute is an example of an artfully written law, yet the respondent will strongly argue that that is not the test, and that while the statute may be flawed in its construction, it is not so flawed as to make it unconstitutional or unworkable when the presumptions previously relied upon in this brief are applied to it.

Respectfully submitted,

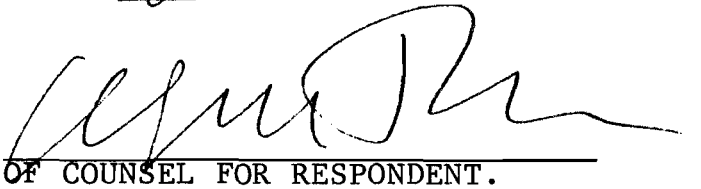
JIM SMITH
ATTORNEY GENERAL



WILLIAM E. TAYLOR
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Patricia Fields Anderson, McCLUNG & ANDERSON, 202 East Liberty Street, P. O. Box 877, Brooksville, Florida 34298-0877, A. R. Mander, III, GREENFELDER, MANDER, HANSON, MURPHY & TOWNSEND, 103 North Third Street, Dade City, Florida 33525, this 20 day of June, 1986.



OF COUNSEL FOR RESPONDENT.